

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ENTEC POLYMERS, LLC

§

Plaintiff

§

v.

CIVIL ACTION NO. _____

TEK-RAP, LLC and
JOHN C. DEMORE,

§

Defendants.

§

PLAINTIFF'S VERIFIED ORIGINAL COMPLAINT

TO THE UNITED STATES DISTRICT COURT:

Plaintiff Entec Polymers, LLC files this Verified Original Complaint stating claims against Defendants Tek-Rap, LLC and John C. Demore.

PARTIES

1. Plaintiff Entec Polymers, LLC ("Entec") is a Florida limited liability company with its principal office and place of business located in Florida.

2. Defendant Tek-Rap, LLC ("Tek-Rap") is a Texas limited liability company with its principal office and place of business located in Harris County, Texas at 13835 Old Beaumont Highway, Houston, Texas 77049. Tek-Rap may be served with citation by serving its registered agent, James M. McIntosh, or its owner and president, John C. Demore, at 13835 Old Beaumont Highway, Houston, Texas 77049.

3. Defendant John C. Demore ("Demore ") is an individual residing in Texas. He may be served with citation at his regular place of business, 13835 Old Beaumont Highway, Houston, Texas 77049, or wherever he may be found.

JURISDICTION

4. This Court has subject matter jurisdiction under 28 USC § 1332(a) because the amount in controversy exceeds \$75,000 and complete diversity exists as between the plaintiff party and the defendant parties. This Court has personal jurisdiction over Tek-Rap because Tek-Rap operates its principal place of business in Texas, and has generally availed itself to jurisdiction in Texas. This Court has personal jurisdiction over Demore because Demore resides and conducts business in Texas, and has generally availed himself to jurisdiction in Texas.

VENUE

5. Venue is proper in the Southern District of Texas, Houston Division, because Tek-Rap's principal office is located in the Houston Division and a substantial part of the events or omissions giving rise to the claims described below occurred in the Houston Division.

FACTS

6. In January 2008, Tek-Rap agreed to Entec's credit terms through a credit application for the purpose of establishing a relationship through which Tek-Rap could purchase plastic resin and related materials from Entec on a credit basis. A true and correct copy of that credit application (the "Credit Application") is attached as Exhibit 1.

7. Tek-Rap proceeded to order plastic resin and related materials from Entec under the terms and conditions of the Credit Application. Entec forwarded an invoice for payment with each delivery of resin; each invoice was subject to a payment term of "net 30" and the other terms and conditions expressed in the Credit Application. Ex. 1.

8. As of the date of this petition, Tek-Rap ordered and received plastic resin material under the following invoices but has failed in whole or in part to make payment:

Invoice No.	Date	Amount
345657	2/18/2008	\$ 4,320.00
348938	1/17/2008	\$32,656.00
348943	1/29/2008	\$32,618.60
349544	1/18/2008	\$38,677.50
349549	2/20/2008	\$39,210.30
349608	2/7/2008	\$37,519.20
353105	2/2/2008	\$ 7,565.00
353135	2/2/2008	\$ 9,520.00
353634	2/7/2008	\$38,974.40
353927	2/13/2008	\$39,042.00
Total		\$280,103.00

True and correct copies of the unpaid invoices are attached as Exhibit 2.

9. The Credit Application includes Demore's personal guaranty of the amounts owed by Tek-Rap:

Applicant's signature attest financial responsibility, ability, and willingness to pay our invoice: in accordance with invoice terms. The undersigned hereby personally guarantees all amounts owed Entec Polymers, Inc. The information given on this application is for the purpose of obtaining credit and is warranted to be true. I/we hereby authorize the firm to whom this application is made to investigate the references listed pertaining to my/our credit and financial responsibility.

FIRM NAME:

TEK-RAP Inc.

OWNERS' SIGNATURE:

R.D. Demore

TITLE:

Owner/FP

DATE:

1-14-08

Please return with this application a copy of your most recent Financial Statement or other financial information which would assist us in considering your request for credit. Please be advised that any information provided will be held in the strictest of confidence and will be used only for our credit granting purposes.

Ex. 1. Demore has not honored his personal guaranty.

10. The above-stated amounts remain due and owing to Entec. Entec has made demand but no payment has been made by Tek-Rap or Demore. Accordingly, Entec has been forced to retain the law firm of Winstead PC to prosecute its claims for payment.

ORIGINAL PETITION

CAUSES OF ACTION

11. Entec incorporates the preceding paragraphs as if set forth in their entirety.

Breach of Contract

12. The Credit Application and each invoice together constitute valid agreements between Entec and Tek-Rap. Tek-Rap has breached the parties' agreements by failing to pay the amounts due under each invoice per its terms. Tek-Rap's breach has proximately caused damages to Entec for which Entec now sues. Entec has been injured by this breach in the amount of each unpaid invoice and prejudgment interest on those amounts at the maximum lawful rate from 30 days after the date of each invoice.

Suit on Account

13. Entec seeks to recover monies due under an open account for materials provided to Tek-Rap as evidenced in the referenced invoices. Entec's claim is just and true, due, and all just and lawful offsets payments, and credits have been allowed. Entec has been injured by Tek-Rap's failure to pay in the amount of each unpaid invoice and prejudgment interest on those amounts at the maximum lawful rate from 30 days after the date of each invoice.

Quantum Meruit

14. In the alternative, Entec seeks to recover the fair market value of the material delivered pursuant to the referenced invoices, plus prejudgment interest on those amounts at the maximum lawful rate from 30 days after the date of delivery.

Breach of Personal Guaranty

15. Demore's personal guaranty of the amounts owed by Tek-Rap constitutes a valid agreement between Entec and Demore. Demore has breached the parties' agreements by failing to pay the amounts owed by Tek-Rap to Entec for the materials ordered under each invoice.

Demore's breach has proximately caused damages to Entec for which Entec now sues. Entec has been injured by this breach in the amount of each unpaid invoice and prejudgment interest on those amounts at the maximum lawful rate from 30 days after the date of each invoice.

Attorneys' Fees

16. Entec's claims against Tek-Rap and Demore are based upon a written contract and seek to recover monies for materials delivered; as such, Entec is entitled to recover reasonable and necessary attorney's fees for breach of contract, as provided by §§ 38.001 of the Texas Civil Practices and Remedies Code.

Conditions Precedent

17. All conditions precedent to recovery have been performed, have occurred, or have been waived or excused.

PRAYER

WHEREFORE, Entec Polymers LLC requests that Tek-Rap, Inc. and John C. Demore be cited to appear and answer, and that upon final hearing, Entec be awarded a judgment for its actual damages, attorney's fees, pre-judgment and post-judgment interest as provided by law, and that Entec be awarded any other relief to which it is entitled.

Respectfully submitted,

/s/ John H. McFarland

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**ATTORNEY-IN-CHARGE FOR PLAINTIFF
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VERIFICATION

THE STATE OF CONNECTICUT §
§
COUNTY OF FAIRFIELD §

BEFORE ME, the undersigned authority, on this day personally appeared Martin Olson, credit manager, who upon his oath deposed and stated that he has read the foregoing Plaintiff's Verified Original Petition and that the factual allegations contained in paragraph 12 are to his personal knowledge true and correct.

Martin Olson, credit manager

Name

SUBSCRIBED AND SWORN TO BEFORE ME by Martin Olson, personally known and identified to me, this 14th day of August, 2008.


Notary Public – State of Connecticut

MARK J. APPELBAUM
Notary Public, State of Connecticut
No. 131773
Commission Expires May 31, 2012



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